

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tileyah Williams	Team: Squad #03	CCRB Case #: 202103086	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/17/2021 11:50 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 11/17/2022	Precinct: 104		
Date/Time CV Reported Thu, 05/20/2021 11:51 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 05/20/2021 11:51 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Sung Kim	27986	950683	104 PCT
2. POM Fidney Moise	20130	962625	104 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO David Hughes	13172	966109	104 PCT
2. PO Jolman Viera	28028	965601	104 PCT
3. SGT Daniel Cruz	05057	953791	104 PCT
4. Nicholas Tush	10476	966373	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Sung Kim	Abuse: Police Officer Sung Kim entered § 87(2)(b) space, in the § 87(2)(b) in Queens.	§ 87(2)(b)
B . POM Fidney Moise	Abuse: Police Officer Fidney Moise entered § 87(2)(b) space, in the § 87(2)(b) in Queens.	§ 87(2)(b)
C . POM Fidney Moise	Abuse: Police Officer Fidney Moise searched § 87(2)(b) space, in the § 87(2)(b) in Queens.	§ 87(2)(b)
D . POM Sung Kim	Abuse: Police Officer Sung Kim failed to obtain language interpretation services for § 87(2)(b)	§ 87(2)(b)
E . POM Fidney Moise	Abuse: Police Officer Fidney Moise failed to obtain language interpretation services for § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 17, 2021, at approximately 11:50pm, § 87(2)(b) was in her room, in the § 87(2)(b) of § 87(2)(b) in Queens. When her children became too noisy upstairs in the house, § 87(2)(b) turned off one of the power switches connected to the Wi-Fi and some lights upstairs in the house. § 87(2)(b) husband, § 87(2)(b) called 911. Police Officer Fidney Moise, Police Officer Sung Kim, Police Officer David Hughes and Police Officer Jolman Viera of the 104th Precinct responded. While at the location, PO Moise and PO Kim entered § 87(2)(b) space in the § 87(2)(b) (**Allegations A and B: Abuse of Authority**, § 87(2)(g) PO Moise searched for the electric box and turned the power back on (**Allegation C: Abuse of Authority**, § 87(2)(g) PO Moise and PO Kim refused to provide interpretation services for § 87(2)(b) (**Allegations D and E: Abuse of Authority**, § 87(2)(g)

The investigation obtained four body-worn camera videos (01, 02, 03 Board Review). Two of these videos are from Police Officer Nicholas Tush and Sergeant Daniel Cruz of the 104th Precinct who responded at some point during the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Sung Kim entered § 87(2)(b) space, in the § 87(2)(b) of § 87(2)(b) in Queens.

Allegation (B) Police Officer Fidney Moise entered § 87(2)(b) space, in the § 87(2)(b) of § 87(2)(b) in Queens.

Allegation (C) Police Officer Fidney Moise searched § 87(2)(b) space, in the § 87(2)(b) of § 87(2)(b) in Queens.

Allegation (D) Police Officer Sung Kim failed to obtain language interpretation services for § 87(2)(b)

Allegation (E) Police Officer Fidney Moise failed to obtain language interpretation services for § 87(2)(b)

§ 87(2)(b) lives in the § 87(2)(b) of § 87(2)(b) in Queens. § 87(2)(b) lives in the same house, on the § 87(2)(b) (main level) with their two sons, § 87(2)(b) who is 13 years old, and § 87(2)(b) who is 16 years old. § 87(2)(b) is not allowed to interact with the rest of her family because they have a court-ordered order of protection against her. The house is a two-floor private house, not including the § 87(2)(b). There is a set of stairs that leads from the street to the front door, which leads to the main level of the house. The § 87(2)(b) has three entrances, one of them is at the front of the house, to the right of the stairs, one entrance is on the inside of the house along a hallway that leads from the front door to the kitchen and the last entrance is through the backyard. To enter the § 87(2)(b) from inside the house, there is a door at the end of the hallway (to the left) on the main level that leads to a set of stairs. To enter the § 87(2)(b) from the backyard, entry into the house is required. Straight ahead of the hallway, is a door and beyond that door is a patio in the backyard. There is a set of stairs that leads off the patio and another of stairs that leads down to the § 87(2)(b) door. The § 87(2)(b) is an open space. Toward the end of the § 87(2)(b) there is a door (door 1) which leads to § 87(2)(b) space. Beyond this door, is a door to the immediate left (door 2) which is § 87(2)(b) bedroom.

Immediately across from, and approximately two feet in front of door 2, is another door (door 3) which is where the circuit breaker box is. Doors 1-3 are part of § 87(2)(b) living space.

§ 87(2)(b) testified that on May 17, 2021, at an unknown time, she was in her room trying to sleep and she heard that her children were making loud noises upstairs (**04 Board Review**). § 87(2)(b) then turned off one of the switches in the circuit breaker. This switch disconnected the modem for the internet and some lights upstairs, but she was not sure which lights. § 87(2)(b) knew that there were over ten switches in the circuit breaker, so she knew that all the power did not turn off. She then went back into her room. Soon after, § 87(2)(b) heard the doorbell to the main level of the house ring and heard § 87(2)(b) talking in the room above hers with some voices unrecognizable to her. § 87(2)(b) could not hear what was said and only heard their voices. A few minutes later, she heard loud banging on the § 87(2)(b) door from the backyard entrance. She walked toward the door and asked in English, "Who?" A voice then responded that it was the police. § 87(2)(b) opened the § 87(2)(b) door and did not recall how wide she opened the door but thought that she opened it wide enough for the officers to walk in. § 87(2)(b) then saw two police officers, PO Moise and PO Kim. PO Moise immediately walked into the § 87(2)(b) and straight toward the circuit breaker box. He turned on the switch that § 87(2)(b) turned off. PO Kim also stepped into the § 87(2)(b) with PO Moise, but he only remained two steps into the § 87(2)(b) speaking to § 87(2)(b) face-to-face. § 87(2)(b) did not want the officers to go into her § 87(2)(b) and did not tell them that they could. § 87(2)(b) did not know whether the officers asked to go inside of the § 87(2)(b) because she could not understand them and did not recall whether they said anything prior to going in the § 87(2)(b). § 87(2)(b) speaks Cantonese, though she can understand and communicate simple English words and statements.

§ 87(2)(b) testified that as soon as she opened her § 87(2)(b) door, she was confused and repeatedly asked in English, "What happened?" (**04 Board Review**). She did not immediately know why the police were there. PO Kim began speaking but § 87(2)(b) did not understand what he was saying. § 87(2)(b) then said, "I need Chinese," and "I need a Chinese translator." Both officers then told § 87(2)(b) that they knew that she could understand English. They both said in English, "You're very good," "You know English," and "You understand English." The officers then continued to speak English and § 87(2)(b) did not understand what they said. PO Moise and PO Kim did not speak Cantonese and they did not get § 87(2)(b) a translator. § 87(2)(b) did not know how many times she said, but she repeatedly told the officers that she needed a Chinese translator. § 87(2)(b) did not call the police and could not say for sure who did, but she believed it was § 87(2)(b) because she heard him speaking to them. Eventually, the officers went upstairs to § 87(2)(b) living area. At that point, § 87(2)(b) was so angry that the officers arrived at her home and did not help her with the problem that she was experiencing. § 87(2)(b) then walked up the stairs behind the officers and arrived at the top step right before the entrance into the house. § 87(2)(b) saw PO Moise and PO Kim and again told the officers that she needed a Chinese translator. She then spoke a lot of Mandarin words with the hopes that the officers would realize that she needed a translator. § 87(2)(b) attempted to give the officers his iPad and § 87(2)(b) believed that he was providing them with an online translator for her, but she could not see what was

on the iPad. The officers did not take the iPad. Eventually § 87(2)(b) closed the door and went back downstairs.

§ 87(2)(b) stated that the order of protection allowed § 87(2)(b) to live in the § 87(2)(b) of the house, but that neither of them were allowed to change any of the locks to common spaces in the home **(05 Board Review)**. Despite the rules of the order of protection, § 87(2)(b) changed the locks to all three doors that led to the § 87(2)(b). When she did this, § 87(2)(b) no longer had access to the electrical panel, water meter and gas meter that are all in the § 87(2)(b). The only way that § 87(2)(b) could get into the § 87(2)(b) is if he destroyed one of the doors at the three entrances. On the night of the incident, § 87(2)(b) realized that the Wi-Fi and some of the lights in house went out and noticed that streetlights were still on. He then called 911 and told them that § 87(2)(b) turned off the electricity and that he did not have access to the electrical panel. The officers then arrived approximately 5-10 minutes later. Officers arrived, he explained the issue to them, and told the officers that he felt that § 87(2)(b) violated their order of protection because she changed the locks to a common area. He showed the officers his order of protection, but the officers stated that there was no indication that the order was active since it had no expiration date. PO Kim and PO Moise then asked § 87(2)(b) how they could gain access to the area where § 87(2)(b) was, and § 87(2)(b) told them about the entrance from his hallway inside of the house, and the one through the backyard.

§ 87(2)(b) noted that PO Moise and PO Kim then asked § 87(2)(b) to lead them to the entrance through the backyard and he did **(05 Board Review)**. § 87(2)(b) then walked down the stairs that led to the § 87(2)(b) unlocked the first door which led into the § 87(2)(b) and arrived at the second door which had been locked and controlled by § 87(2)(b). PO Moise and PO Kim then told § 87(2)(b) to go back in the house so that he could remain separated from § 87(2)(b) and he did so. As he was leaving, he heard the officers knocking and saying something in the nature of, "Open the door." § 87(2)(b) did not see if or when the officers went into the second door of the § 87(2)(b). He could not hear what happened in the § 87(2)(b).

§ 87(2)(b) stated that approximately ten minutes after he left the officers in the § 87(2)(b) he heard § 87(2)(b) talking to the officers on the § 87(2)(b) **(05 Board Review)**. By then his power was back on **(06 Board Review)**. § 87(2)(b) heard § 87(2)(b) say something in English but did not recall what she said **(05 Board Review)**. He heard an officer say, "I know you can speak English" and something in the nature of her needing to be quiet and go back downstairs. He did not recall if and what else the officers said but knew that they were using simple English words. He heard § 87(2)(b) speaking in Mandarin and saying that she did not know anything that they were saying. § 87(2)(b) also asked for a translator, although § 87(2)(b) was not sure if this was in English or Mandarin. Neither of the officers spoke Mandarin. The officers did not get a translator for § 87(2)(b). Eventually § 87(2)(b) left. § 87(2)(b) said that he heard § 87(2)(b) speak Cantonese to the officers on the § 87(2)(b) and that she was not proficient in English **(07 Board Review)**. He also heard her repeatedly ask for a translator. § 87(2)(b) then prepared his iPad with Google translate and walked to the hallway entrance to the § 87(2)(b). He handed it to one of the officers but did not remember if the officer used the iPad before handing it back to him.

New York City Police Department EVENT § 87(2)(b) generated for this incident notes that § 87(2)(b) called 911 and reported that § 87(2)(b) violated their order of protection (**08 Board Review**). He explained that she was on the first floor where she was not supposed to be, that she changed the locks and turned off the electricity from the § 87(2)(b). He added that he was unable to access the § 87(2)(b).

Queens County Temporary Order of Protection § 87(2)(b) § 87(2)(b) notes that it is an order against § 87(2)(b) on behalf of § 87(2)(b) § 87(2)(b) and § 87(2)(b) (**09 Board Review**). The order says that § 87(2)(b) must stay away from § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) needed to stay in the § 87(2)(b) and not enter any other section of the home. § 87(2)(b)

PO Moise's BWC recording shows that starting at 2 minutes, § 87(2)(b) opens his door and tells officers that he and his children have an order of protection against § 87(2)(b) (**02 Board Review**). At 2:20 minutes, § 87(2)(b) points toward the inside of his house, PO Moise pushes the door open and asks where § 87(2)(b) was. § 87(2)(b) then walks through a short hallway and points downward to an area out of view. PO Moise follows him. § 87(2)(b) then says that § 87(2)(b) changed that lock. A closed door is in view. PO Moise asks, "She lives down here?" and § 87(2)(b) confirms that she does. § 87(2)(b) then explains that the lock was not supposed to be changed because the door led to a common area. PO Moise tells § 87(2)(b) to show him the order of protection and he does. At 3:45 minutes, while PO Moise waits for § 87(2)(b) to get the order, he tells PO Kim that it did not sound like a violation because it was not a common area. It is apparent that the house is well lit. At 4:03 minutes, § 87(2)(b) hands PO Moise the order, which he reads. At 4:32 minutes, § 87(2)(b) explains that § 87(2)(b) turned the power off. PO Moise says that the place where § 87(2)(b) was sleeping was not a common area. At 11:15 minutes, he says that he will go talk to § 87(2)(b).

The same recording shows that at 13:40 minutes, § 87(2)(b) opens the door and leads the officers through the § 87(2)(b) and to a closed door, door 1 (**02 Board Review**). PO Moise then sends § 87(2)(b) back out of the § 87(2)(b). At 15 minutes, PO Moise knocks on a white door which leads to § 87(2)(b) room. PO Moise announces that it is the police and § 87(2)(b) opens the door slightly. She extends her open palm forward and tells PO Moise to, "hold on." At 15:17 minutes, PO Moise walks past the door, and it appears that § 87(2)(b) has entered a dark room, door 2, to the left. PO Moise flashes his flashlight into the room. At 15:25 minutes, § 87(2)(b) comes into view and places a mask over her face while telling PO Moise to hold on. PO Moise has walked beyond the white door and said okay that he is just, "making sure." At 15:30 minutes, PO Moise turns to the right and says aloud, "this is all her area, right? Okay." It is unclear who he is talking to, and no one responds to him. At 15:38 minutes, PO Moise asks § 87(2)(b) if she changed her locks, and § 87(2)(b) says, "I don't know, can you change the language with me?" PO Moise responds, "Huh?" At 15:43 minutes, § 87(2)(b) says, "Can you change the language with me Chinese?" At 15:47 minutes, § 87(2)(b) says that she does not know English and PO Moise says, "You talk good English." At this point, PO

Kim and PO Moise have passed door 1 and are standing in front of door 2, talking to § 87(2)(b) face to face. At 15:50 minutes, PO Moise says, "Lock, loc"" and jiggles § 87(2)(b) doorknob on her bedroom door. He passes the threshold of door 2 to do this. PO Moise then speaks in broken sentences and asks, "You change?" § 87(2)(b) says no, and PO Moise asks, "Long time?" § 87(2)(b) repeats "Long time." At 15:57 minutes, PO Moise point out of view and asks, "this one," "you changed," "turned off power, upstairs?" At 16:02 minutes, § 87(2)(b) makes a motion of a phone and asks, "Can I?" PO Moise speaks over her and asks where the generator is, while walking further into the hall. He uses his flashlight to lead him into a closed door, door 3, and tells § 87(2)(b) to stay where she was.

The same recording shows that at 16:12 minutes, PO Moise walks into door 3, which has electrical panels (02 Board Review). § 87(2)(b) then says, "Excuse me, you tell me what happened and call Chinese, I don't know what happened." At 16:20 minutes, PO Kim says, "Your English is good." PO Moise says that § 87(2)(b) English is perfectly fine and that she was speaking good. PO Moise looks around the circuit breaker. At 16:58 minutes, § 87(2)(b) says in the background, "Sir, can you stop anything?" and PO Moise advises PO Kim to talk to § 87(2)(b) PO Kim then tells § 87(2)(b) that they were just checking something. At 17:12 minutes, § 87(2)(b) says, "Okay he stop anything, you what happened, I don't know what happened, I call police." § 87(2)(b) uses short pauses in between her words. PO Kim then says that they (the police) are there, and § 87(2)(b) asks whether he could change the language for her. At 17:25 minutes, PO Moise starts pressing buttons and reading aloud "on." At 17:37 minutes, PO Moise tells either PO Viera or PO Hughes to check if the electric was on upstairs because he had just turned something on. PO Viera and PO Hughes never entered § 87(2)(b) living space. At 17:54 minutes, § 87(2)(b) has a phone held to her ear and says, "I need Chinese, too much the police here, but no change the language for me, I don't know what happened okay." She continues at 18:13 minutes to say, "My home have three police here, I don't know what happened, I tell him change the language for me but nothing." At 18:30 minutes, after PO Moise tells an officer that he turned something on, § 87(2)(b) says, "Please don't go up, please go out, this my home okay." PO Kim says that he understands. § 87(2)(b) then points at PO Kim and loudly tells him to tell her what happened. PO Kim asks why § 87(2)(b) is screaming and that he was going to tell her, and to relax. At 18:53 minutes, § 87(2)(b) tells PO Kim that she told him that she did not know English and PO Kim says that she is talking to him in English. At 19 minutes, § 87(2)(b) said that she knew a little bit English and PO Moise chuckles and says that § 87(2)(b) is doing fine. PO Moise is still beyond door 3, in front of the electrical panel box. At 19:16 minutes, § 87(2)(b) tells the 911 operator on speaker phone that she needs the language changed for her and the operator asks whether the police are at her house. PO Moise responds, "yes." § 87(2)(b) then explains to the operator that the police were there but that she did not call them. At 19:42 minutes, PO Moise said to the operator that he was from 104 Adam, and that he, "had it under control" and that § 87(2)(b) was just being difficult. The operator then disengaged the call. At 20:22 minutes, PO Viera tells PO Moise that the power was on upstairs. At 20:30 minutes, PO Moise points at the electric box and says, "don't touch it." § 87(2)(b) told PO Moise to listen to her and PO Moise told her not to talk. At 21:31 minutes, § 87(2)(b) is now standing in the doorway of door 2. She asks why the officers did not change to Chinese for

her and PO Kim said that she was speaking English. § 87(2)(b) continued to say that she could not sleep and made an inaudible statement while displaying marching. PO Kim then says that he understands what she is saying and then says that § 87(2)(b) was saying that she cannot sleep because people made noise upstairs and § 87(2)(b) agrees. Both officers then say, “you can’t do that.” At 23:16 minutes, § 87(2)(b) displays a bottle of prescribed medication and yells that she can’t sleep. § 87(2)(b) then cries, yells and repeats that she can’t sleep all day and that her pills were not working now. § 87(2)(b) is still not speaking in complete sentences. At 25:25 minutes, § 87(2)(b) slumps her body over, places both hands over her face and is crying. At 26 minutes, § 87(2)(b) points to PO Kim and makes an inaudible statement, PO Moise interprets that § 87(2)(b) was saying that she used to be strong like PO Kim but now she has lost weight. At 27:03 minutes, § 87(2)(b) goes into her room lays on her bed and sobs. At 28:42 minutes, PO Moise reaches his hand into door 2 and asks her if she has keys while touching his pointer and thumb and making quick twisting motions. § 87(2)(b) repeats while crying and yelling that there is noise all day and night. PO Moise then walks into § 87(2)(b) bedroom, turns on his flashlight and points it to the far corner of the bedroom which is dark. At 29:07 minutes, PO Moise stands approximately three feet away from § 87(2)(b) who is bent over forward and crying on her bed. PO Moise says that he cannot hear anything, and § 87(2)(b) says, “now nothing.” At 31:30 minutes, PO Moise asks for § 87(2)(b) ID. It is apparent that she is using her mobile phone to translate. PO Kim is also in § 87(2)(b) room. § 87(2)(b) then speaks into the phone in Cantonese and her phone translates that ACS requires that her child goes to bed before 11AM and PO Moise says that he is above ACS and that the child can go to bed at whatever time he wants. At 33:00 minutes, § 87(2)(b) begins speaking Mandarin and says that she does not know what PO Kim is saying and that he needs to listen to her and change the language. At 35 minutes, PO Kim and PO Moise ask § 87(2)(b) for her ID and she says in English that she does not remember where it is. PO Moise then leaves her bedroom and goes back to the electric box. At 37:17 minutes, PO Moise walks up a flight of stairs which are a few feet from § 87(2)(b) bedroom. He then continues to speak with § 87(2)(b).

At 39:10 minutes in the same recording, § 87(2)(b) arrived at the main level and loudly speaks Cantonese (**02 Board Review**). At 40:50 minutes, PO Moise walks a few feet and § 87(2)(b) comes to the camera angle. At 47:13 minutes, § 87(2)(b) hands PO Moise a translator on a tablet. § 87(2)(b) begins speaking to § 87(2)(b) in Cantonese. At 48 minutes, PO Moise tells § 87(2)(b) to put the tablet from English to Chinese. At 48:18 minutes, § 87(2)(b) tells officers that § 87(2)(b) speaks Cantonese so that Chinese really would not work. At 48:26 minutes, § 87(2)(b) tells PO Moise that § 87(2)(b) only speaks a little bit of English, but he thinks that she understands. § 87(2)(b) continues to speak to the officers in Cantonese. PO Moise walks away to complete the domestic incident report. PO Kim remains at the door of the stairs telling § 87(2)(b) to stop yelling. At one point, PO Kim tells § 87(2)(b) that he does not speak Chinese and § 87(2)(b) says in Mandarin, “Oh, I don’t speak English.” At 57:25 minutes, § 87(2)(b) asks PO Moise if they can contact a translator because he could hear § 87(2)(b) saying that she does not understand. PO Moise says that § 87(2)(b) was talking perfectly fine. PO Moise completes the report and he and PO Kim then leave.

PO Moise testified that after § 87(2)(b) explained that § 87(2)(b) turned the power off, he wanted to go to the § 87(2)(b) to talk to § 87(2)(b) determine whether she turned off the power and to turn it back on (10 Board Review). The door to the § 87(2)(b) was unlocked and PO Moise did not ask anyone if he could open that door because § 87(2)(b) told them that the electrical breaker was in the § 87(2)(b) and that he wanted the power back on. PO Moise further noted that he believed that it was an issue to be fixed through the electrical breaker because the power to the whole house had not gone off. PO Moise noted that the only door that blocked him from the electrical breaker was the initial door to the § 87(2)(b) which was unlocked. PO Moise never knocked on any door and entered after § 87(2)(b) opened the door slightly. PO Moise said that he immediately walked to the circuit breaker, while § 87(2)(b) interacted with PO Kim. PO Moise turned on the lights in the circuit breaker because § 87(2)(b) requested that he do so. § 87(2)(b) appeared hostile and irate because she was yelling and said in English, “Why are you in my part of the house?” “I did not call police.” § 87(2)(b) then said that she was going to call the police and PO Moise understood this to mean that § 87(2)(b) wanted the officers to leave. § 87(2)(b) appeared to have a Chinese accent but did not appear to have any issue with speaking or understanding English.

PO Moise noted that he did not have any proof that § 87(2)(b) turned off the power, but that if she did, she could have been arrested for harassment and a violation of her order of protection (10 Board Review). When PO Moise asked § 87(2)(b) whether she turned off the power, she explained that she could not sleep and that her children stayed up all night with the television, computer and walking on the floor above her. PO Moise believed that § 87(2)(b) could understand everything that he said because she responded to his question. § 87(2)(b) asked PO Moise for the language line approximately three times, but PO Moise said that it was not necessary because although she requested it, there was no language barrier. PO Moise was familiar with the language line and said that he had used it in the past. When asked about the protocol of having a civilian request language service, PO Moise said that he only calls for language services when there is a language barrier. He also did not call the language line because he already turned the power back on.

PO Moise testified that at some point, § 87(2)(b) started walking back and forth from where the officers were, to her room and was yelling, crying and shaking her pill bottle (10 Board Review). PO Moise believed that § 87(2)(b) appeared to be emotionally disturbed because of the way that she was crying and yelling. PO Moise believed that § 87(2)(b) then said, “Look” or “See what I have to go through” when she was inside of her room. PO Moise believed that § 87(2)(b) wanted him to see what was going on in her room. PO Moise then entered § 87(2)(b) room. He entered it because at that time, § 87(2)(b) was talking about the noise upstairs and PO Moise wanted to determine whether he could hear any noise coming from upstairs at that moment, and to see how thin the walls were. He also entered the room because it appeared that § 87(2)(b) needed help. PO Moise saw that after he went back upstairs and was talking to § 87(2)(b) son appeared to be interpreting to § 87(2)(b) in Chinese. PO Moise believed that her son was reiterating what he said, and that § 87(2)(b) already understood PO Moise. PO Moise did not know why the son helped and stated that

he did not interpret for the officers but appeared to provide additional information.

PO Kim's testimony was similar to that of PO Moise's (**11 Board Review**). He denied walking right into § 87(2)(b) bedroom door once she opened it. He said that § 87(2)(b) never told the officers that she had difficulty understanding what they were saying but she did request Chinese. PO Kim said that their policy for when civilians request an interpreter was to call the language line. PO Kim did not call an interpreter because he believed that § 87(2)(b) understood what he was saying, since she answered his questions in English. After § 87(2)(b) started screaming and walking back and forth, PO Kim went into her room, stood by the doorway, and asked if she wanted to go to the hospital. § 87(2)(b) said that she did not. He went into the room because § 87(2)(b) was acting irate and threw her pill bottle on the floor. PO Kim was concerned for § 87(2)(b) safety.

Payton v. New York, 455 U.S. 573(1980) states that warrantless entries into premises are permitted under limited circumstances, including exigent circumstances, the emergency doctrine, hot pursuit, plain view doctrine and with voluntary consent (**12 Board Review**). Consent must be voluntary and given by someone with apparent authority of the premise. One of the limited exceptions to the warrant requirement and, indeed, to the requirement of probable cause, is voluntary consent to the search. Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. People v. Gonzalez, 39 N.Y.2d 122 (1976) (**13 Board Review**).

NYPD Patrol Guide Procedure 212-90 notes that when an officer encounters a limited English proficient individual, that they must determine the primary language of the individual and contact the language line or a certified Department interpreter (**14 Board Review**).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
There was no evidence that the power that § 87(2)(b) de-activated created a safety hazard or other emergency. The only way that officers could have entered the premises is with consent. § 87(2)(b) led the officers downstairs to the § 87(2)(b) where he had authority to authorize entry. However, § 87(2)(b) did not have authority to provide consent to the officers to enter of the doors within § 87(2)(b) living space. PO Moise admitted on BWC that § 87(2)(b) space was not a common area. § 87(2)(b) did not provide officers with consent to enter her living space. While the officers were in § 87(2)(b) living space, she was yelling and crying. § 87(2)(b) had officers walking through her space, tampering with her electric box, she was unable to understand what officers said, and she was not provided language services. When officers entered her room, they reiterated that § 87(2)(b) could not turn her power off and added that her children could sleep when they wanted to. § 87(2)(b) ability to give informed and voluntary consent to enter her room was limited because she experienced a language barrier. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

It was apparent from the BWC video that § 87(2)(b) was not proficient in English. When PO Moise and PO Kim began speaking to her, she was unable to make complete sentences and PO Moise used incomplete English statements to communicate with § 87(2)(b). § 87(2)(b) asked the officers for an interpreter and both § 87(2)(b) and § 87(2)(b) expressed this to the officers as well. However, the officers disregarded these requests based on their own assessment that § 87(2)(b) appeared to understand them. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**15 Board Review**).
 - PO Kim has been a member-of-service for ten years and this is the first CCRB complaint to which he has been a subject.
 - PO Moise has been a member of service for five years and has been a subject in CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)
- § 87(2)(g)

Mediation, Civil, and Criminal Histories

- Cases were not being sent to mediation at the time that this complaint was filed.
 - As of February 25, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**16 Board Review**).
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(g)

Squad: 3

Investigator: <u>Tileyah Williams</u>	Investigator <u>Tileyah Williams</u>	<u>09/01/2022</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Rolando Vasquez</u>	<u>IM Rolando Vasquez</u>	<u>9/2/2022</u>
Signature	Print Title & Name	Date